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31

32 **UNITED STATES BANKRUPTCY COURT**

33 **DISTRICT OF NEVADA**

34 In re:

35 USA COMMERCIAL MORTGAGE  
36 COMPANY,

37 USA CAPITAL REALTY ADVISORS, LLC,

38 USA CAPITAL DIVERSIFIED TRUST DEED  
39 FUND, LLC,

40 USA CAPITAL FIRST TRUST DEED FUND,  
41 LLC,

42 USA SECURITIES, LLC,

43 Debtors.

44 Case No. BK-S-06-10725-LBR  
45 Case No. BK-S-06-10726-LBR  
46 Case No. BK-S-06-10727-LBR  
47 Case No. BK-S-06-10728-LBR  
48 Case No. BK-S-06-10729-LBR

49 **CHAPTER 11**

50 Jointly Administered Under  
51 Case No. BK-S-06-10725 LBR

52 **STIPULATION FOR AMENDMENT  
53 OF PROOF OF CLAIM NUMBER  
54 10725-00545 FILED BY ELIAS FAMILY  
55 TRUST DTD 5/19/04**

56 Hearing Date: December 14, 2007  
57 Hearing Time: 9:30 a.m.

58 **Affects:**

59  All Debtors  
60  USA Commercial Mortgage Company  
61  USA Capital Realty Advisors, LLC  
62  USA Capital Diversified Trust Deed  
63 Fund, LLC  
64  USA Capital First Trust Deed Fund, LLC  
65  USA Securities, LLC

1        The USACM Liquidating Trust (the “USACM Trust”) and USA Capital Diversified  
2 Trust Deed Fund, LLC (“DTDF”) hereby stipulate with the Elias Family Trust dtd 5/19/04  
3 (“Claimant”) as follows:

4        1.      On or about October 10, 2006, Claimant filed Proof of Claim No. 10725-  
5 00545 against USA Commercial Mortgage Company in the amount of \$125,000.00 (the  
6 “Claim”).

7        2.      Claimants provided documentation attached to the Proof of Claim that Claim  
8 10725-00545 is, in part, an investment in DTDF and, in part, an investment in various  
9 loans as a Direct Lender.

10       3.      DTDF, upon reviewing DTDF’s books and records, has determined that  
11 Claimant in fact holds an allowed equity security interest in DTDF in the amount of  
12 \$48,047.32, as of April 13, 2006 (the “Petition Date”).

13       4.      On September 14, 2007, the USACM Trust and DTDF jointly filed an  
14 “Objection of USACM Trust To Elias Family Trust dtd 5/19/04’s Claim Filed in Wrong  
15 Debtor’s Case; Objection of DTDF to Proposed Allowance of Claim” [Docket No. 4795]  
16 (the “Objection”), requesting that Claim No. 10725-00545 be disallowed in its entirety in  
17 the USA Commercial Mortgage (“USACM”) bankruptcy case due to the Claim having  
18 been erroneously filed in the USA Commercial Mortgage Company case when the Claim  
19 is based upon an equity interest in DTDF.

20       5.      Subsequent to filing the Objection, counsel for the USACM Trust discussed  
21 with Woodrow Elias, trustee for Claimant, the merits of the Objection and the  
22 documentation presented by Claimant in support of the Claim totaling \$125,000.00.

23       6.      Pursuant to such discussion, the USACM Trust agreed to (i) seek a  
24 continuance of the hearing on the Objection, initially set for October 15, 2007, at 9:30 a.m.  
25 and continued at that date and time to December 14, 2007, at 9:30 a.m., so that the parties  
26 could enter into this stipulation, and (ii) withdraw its objection to the amount of the Claim

1 that is in excess of the Claimant's equity interest in DTDF, or \$76,952.62, without  
2 prejudice to the USACM Trust's right to later object to such amount.

3 7. This stipulation shall not affect any other claims filed by Claimant in these  
4 jointly-administered bankruptcy proceedings.

5 8. This stipulation shall not affect either the amount or validity of Claimant's  
6 equity interest in DTDF as reflected in DTDF's books and records as of the Petition Date.

7 WHEREFORE, based on the stipulation set forth above, the parties hereby agree  
8 and request that the Court approve this stipulation as an order of the Court pursuant to Fed.  
9 R. Bankr. P. 3006, as follows:

10 1. Proof of Claim No. 10725-00545 is hereby amended to a general unsecured  
11 claim in the amount of \$76,952.62.

12 2. Proof of Claim No. 10725-00545 is hereby disallowed in its entirety as  
13 against DTDF.

14 3. Claimant's equity interest in DTDF is hereby allowed in the amount of  
15 \$48,047.32, as reflected in DTDF's books and records as of the Petition Date.

16 4. The USACM Trust reserves all of its rights to object to Proof of Claim No.  
17 10725-00545, as amended.

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1       5. The hearing on the Objection to Claim No. 10725-00545 scheduled for  
2 December 14, 2007, at 9:30 a.m., may be vacated.

3       DATED:     October 19, 2007.

4       **LEWIS AND ROCA LLP**

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31       **ELIAS FAMILY TRUST DTD 5/19/04**

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**LEWIS  
AND  
ROCA  
LLP  
LAWYERS**

1       5. The hearing on the Objection to Claim No. 10725-00545 scheduled for  
2 December 14, 2007, at 9:30 a.m., may be vacated.

3       DATED:   October 18, 2007.

4       **LEWIS AND ROCA LLP**

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31       **ELIAS FAMILY TRUST DTD 5/19/04**

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